RECENT CASE NOTES

AGENCY—MASTER AND SERVANT—LIABILITY OF MASTER FOR INJURY TO INFANT VOLUNTEER.—The driver of the defendant's three-horse van, without authority to hire servants for the master, requested the plaintiff, a fourteen-year old boy, to assist him. The plaintiff was injured by one of the horses and brought an action for personal injuries. *Held,* that the plaintiff could not recover, although the driver was negligent in intrusting the handling of the horses to him, since the latter was in no better position than a hired servant. *Heasmer v. Pickfords, Ltd.* (1920, K. B.) 36 T. L. R. 818.

The view is well settled in England, that a volunteer, as regards the master's liability towards him, is in the same position as if he were a servant, and assumes all the ordinary risks of service, including that of negligence of a fellow servant. *Degg v. Midland Ry.* (1857, Exch.) 1 H. & N. 773; Pollock, *Torts* (9th ed. 1912) 106-7. But a master will be liable to a volunteer who assists in the use of an instrumentality not fit and proper for its purpose. See *Bass v. Hendon Urban District Council* (1912, C. A.) 28 T. L. R. 317. Some duty of the master to instruct an infant servant in the use of dangerous instrumentalities, is recognized though it is capable of being delegated. *Cribb v. Kynock* [1907] 2 K. B. 548; *Young v. Hoffman Mfg. Co.* [1907] 2 K. B. 646. Minor servants assume only those risks pointed out to them or discernible by a person of their age, capacity, and experience, in the exercise of ordinary care. 4 Thompson, *Negligence* (2d ed. 1904) sec. 4685; 1 Bailey, *Personal Injuries* (2d ed. 1912) 681. If the boy is in the position of a servant so as to bar recovery for the driver's negligence, he should be in the position of a servant as regards the master's duty to see that a minor servant is properly instructed. But no point was made in the instant case of the failure to warn and instruct. The majority of the workmen's compensation acts cannot help a volunteer, for besides depending, usually, on contract, express or implied, they exclude casual employees from their operation. 20 Halsbury, *Laws of England* (1911) secs. 326-330; 3 Bailey, *Personal Injuries* (2d ed. 1912) sec. 871 ff. (text of American acts); see *State v. District Court* (1917) 138 Minn. 416, 165 N. W. 268 (emergency); also (1917) 27 YALE LAW JOURNAL, 571. In the United States, at common law, a volunteer is not at all on the footing of a servant, for the relation lacks the consent of the master, and such a person assumes all the risks of the situation, save that of wanton or wilful injury, not merely all the *ordinary* risks. *Hot Springs Ry. v. Dial* (1893) 58 Ark. 318, 24 S. W. 500; *Hunter v. Corrigan* (1909) 139 Ky. 315, 122 S. W. 131; 43 L. R. A. (N. S.) 187, note. See also (1917) 27 YALE LAW JOURNAL, 1086. Age and mental capacity are then irrelevant inquiries. *Atlanta & W. P. Ry. v. West* (1905) 121 Ga. 641, 49 S. E. 711; *cf. Wells v. Kentucky Distilleries Co.* (1911) 144 Ky. 438, 138 S. W. 278 (*ratio* analogous to attractive nuisance cases). However, the tendency in the United States is to permit recovery by a volunteer who acts to prevent possible injury to property or persons as a result of a defendant's negligence. See (1917) 27 YALE LAW JOURNAL, 960. The plaintiff's act in the instant case was a little less commendable. The decision in the instant case is in accord with the great majority of the English and American cases, though it seems highly artificial to base it on the doctrine of common employment. Both the English and American views are, it would seem, unsatisfactory in their result to society.

CONTRACTS—ILLEGALITY—TRANSFER OF TITLE WITHOUT DELIVERY OF POSSESSION.—The plaintiff built a house and sold it to the defendant for immoral purposes, taking notes and a deed of trust in payment. After payment of